

Agenda Item: 15-31 **Hearing Officer's Report on Revisions to Open Burning Rules to Reflect S.L. 2014-120 (529)**

Explanation:

A public hearing was held in Raleigh, NC on July 21, 2015, to take public comments on the open burning rules. Mr. Gerard Carroll, member of the Environmental Management Commission (EMC), was appointed and acted as the hearing officer for this hearing.

The current version of the Rule 15A NCAC 02D .1903 prohibits residential open burning of stumps and logs that are greater than six inches in diameter while leaves, tree branches, and yard trimmings may be burned on site if all provisions listed in .1903(a) (1) are met.

The General Assembly enacted Session Law 2014-120 (S.L. 2014-120) on September 18, 2014 to require the EMC to adopt a rule that pertains to residential open burning without an air quality permit. Section 24.(b) of S.L. 2014-120 mandates that the EMC and the Division of Air Quality (DAQ) shall implement 15A NCAC 02D .1903, Open Burning without an Air Quality Permit, as provided in Section 24.(c) of S.L. 2014-120, which includes logs and stumps in the list of permissible open burning without an air quality permit and specifies that burning of logs or stumps of any size shall not be considered to create a nuisance for purposes of the application of the open burning air quality permitting exceptions listed in Section 24.(c).

Amendments to the Rule 15A NCAC 02D .1903 are governed by Section 24.(d) of S.L. 2014-120 which dictates that: "The Commission shall adopt a rule to amend the Rule 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) consistent with Section 24.(c) of S.L. 2014-120. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 24.(c) of S.L. 2014-120 of this section".

The Rule 02D .1902, Definitions, contains the definition of "Nuisance" as causing physical irritation exacerbating a documented medical condition, visibility impairment, or evidence of soot or ash on property or structure other than the property on which the burning is done. At the same time, Section 24.(c) of S.L. 2014-120 requires that residential open burning of logs or stumps of any size shall not be considered to create a nuisance for purposes of the application of the open burning air quality permitting exception.

Removing a condition that the burning does not create a nuisance from the Subparagraph .1903(b)(1)(E) and the definition of nuisance from the Paragraph .1902(10) was thought as an attempt to resolve these conflicting provisions in the exceptions relative to what is considered nuisance by not including what appeared to be logical difficulties and inconsistencies in implementing the rule when considering the criteria typically applied in review of rules in G.S. 150B-21.9. Upon consideration of comments, the language originally proposed for deletion in 02D

.1902(10) and .1903(b)(1)(E) and (3) is restored as reflected in Chapter II of this hearing record.

Four persons provided comments on the proposed amendments to the open burning rules during the comment period for the hearing record.

One person asked for clarification regarding striking the language that open burning is not creating a nuisance in the proposed rule .1903, elimination of the definition of the nuisance in the Rule .1902, and clarification of how this is inspired by the session law. The proposed elimination of the language was an attempt to resolve these conflicting provisions. The language originally proposed to be deleted has been restored as reflected in Chapter II.

A second person commented that while the law removes the requirements of an air quality permit for residential debris burns and authority for the DAQ to investigate nuisance complaints, it does not discharge the DAQ of its responsibility to protect public health. She also advised the DAQ to make every effort to protect public health within the constraints of the law. The DAQ already partners with other groups to provide outreach on information on the requirements of the open burning rules including the potential for adverse health effects. No changes were made to the rules as a result of this comment.

The third person asked the agency to address 110(1) in the final submission to assure that air quality is not impacted by this change to the SIP. Section 110(l) noninterference with maintenance of the NAAQS demonstration for the open burning rule amendments will be submitted in the final submission of the amended rules. He also requested explanations of how the rule changes are consistent with the provisions of Section 24.(c) of the S.L. 2014-120 and how allowing the burning of logs and stumps will not cause a nuisance. The proposed removal of the condition that the burning does not create a nuisance was an attempt to resolve conflicting provisions in the exceptions relative to what is considered nuisance by not including what appeared to be logical difficulties and inconsistencies in implementing the rule when considering the criteria typically applied in review of rules in G.S. 150B-21.9. Upon consideration of comments, the language originally proposed for deletion in 02D .1902(10) and .1903(b)(1)(E) and (3) is restored as reflected in Chapter II of this hearing record.

The fourth person commented that open burning of materials permissible to be burned without air quality permit on private property results in smoke inundating and ash getting on neighboring property when the wind shifts. The proposed removal of the condition that the burning does not create a nuisance was an attempt to resolve conflicting provisions in the exceptions relative to what is considered nuisance by not including what appeared to be logical difficulties and inconsistencies in implementing the rule when considering the criteria typically applied in review of rules in G.S. 150B-21.9. Upon consideration of comments, the language originally proposed for deletion in 02D .1902(10) and .1903(b)(1)(E) and (3) is restored as reflected in Chapter II of this hearing record.

Recommendation:

In light of comments received from the public, as well as the clear language of SL 2014-120, the hearing officer recommends that the rule be modified to incorporate the language contained in section 24(c) of the law verbatim. This language retains condition (5), as well as the definition of "nuisance" at .1902.

The definition of nuisance in 02D .1902(10), 02D .1903(b)(1)(E) and the phrase "and which do not create a nuisance" in 02D .1903(b)(3) have been restored in the rules as reflected in Chapter II of the hearing report.

The Hearing Officer recommends that the proposed amendments as presented in Chapter II of this hearing report be adopted by the Environmental Management Commission.